IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2378 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SABERA ALIAS MADHUBEN AYUBBHAI MOHMADBHAI VORA

Versus

COMMISSIONER OF POLICE BARODA

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Appearance:

MS DR KACHHAVAH for the Petitioner.

MR KAMLESH KACHHAVAH for Petitioner No. 1

Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner, a lady detenue, has challenged her detention order dated 6th February, 2004, by which she is detained under the provisions of the Gujarat Prevention of Anti-social

Activities Act, 1985 ("PASA", for short). The petitioner is detained as an "Immoral Traffic Offender", under Section 2(g) of PASA. In the detention order, there is a reference of a criminal case, which is registered against the petitioner under the Immoral Traffic (Prevention) Act, 1956. It is alleged against the petitioner that, with the help of her associates, she is indulging in illegal activities under the Immoral Traffic (Prevention) Act, 1956 and that she is keeping a premises on rent, in which some girls are kept and such girls are provided to various people by charging money. After considering the said case and after considering the statements of two witnesses, whose names have not been disclosed to her, she has been detained under PASA. It is the aforesaid order, which is impugned in this petition.

The learned Advocate for the petitioner has vehemently submitted that, the petitioner is a lady detenue, and the Authority has not undertaken appropriate enquiry under Section 9(2) of PASA. It is submitted that the names of the witnesses are not disclosed and, therefore, there is no subjective satisfaction recorded by the authority in connection with not disclosing the names of witnesses by exercising powers under Section 9(2) of PASA. To substantiate this point, the learned Advocate for the petitioner has relied upon the decision of this Court in Kishor Naginbhai Parmar v. State of Gujarat & Ors., 2000 (4) GLR 3236, wherein this Court (Coram : A.L. Dave, J.) held as under :-

" ... ... ...

14. In this view of the matter, the order of the detaining authority and the grounds of detention do not indicate the basis of arriving at the subjective satisfaction. A mere statement about having verified the veracity, genuineness and correctness of the fear expressed by the witnesses, under such circumstances, can be of no virtue, in absence of contemporaneous material. The detention therefore stands vitiated for want of proper exercise of powers under Sec.9(2) of the PASA Act and resultant infringement of a constitutional right of the detenue of making an effective

representation due to non-disclosure of names of the witnesses. The order of detention, therefore, deserves to be quashed and set aside by allowing this petition.

... ... ...."

In 2000 (4) GLR 3236 (supra), this Court held that before withholding the names under Section 9(2) of the Act, the antecedents of the detenue as well as the credentials of the witnesses are also required to be verified by the detaining authority. Since that has not been done in this case, in my view, no reliance can be placed under Section 9(2) of the Act, as the satisfaction of the authority can be said to be vitiated since the requisite exercise was not undertaken by the detaining authority.

The learned Advocate for the petitioner submitted that only one solitary criminal case is registered against the petitioner, and, therefore, it cannot be said that the petitioner is a habitual offender, as, under the provisions of the Act, a person, who is a habitual offender, can be detained under Section 2(g) of the Act. In that view of the matter, since it cannot be said that the petitioner is a "habitual offender", as there is only a solitary case which is registered against the petitioner, and further, since the Authority has not undertaken appropriate enquiry under Section 9(2) of the Act, the petition is required to be allowed and the petitioner is required to be released forthwith.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless she is required in connection with any other case. Rule is made absolute.

At this stage, learned Advocate for the petitioner voluntarily submitted, after taking instructions from his client, that the petitioner will not enter Baroda City till 30th November, 2004, except for attending court proceedings or to comply with the conditions, if any, of bail. This voluntary statement is recorded. It is for the Police Authority to monitor the same.

3rd August, 2003 ( P.B. Majmudar, J. )

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(apj)